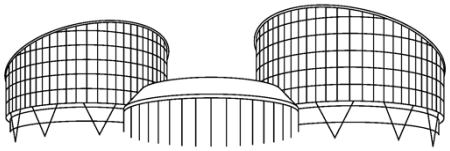

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF A.E. AND OTHERS v. ITALY

(Applications nos. 18911/17 and 2 others)

JUDGMENT

Art 3 (substantive) • Material conditions of arrest of Sudanese nationals and their bus transfer to migrant hotspot centre and back, in the context of their attempted removal by the authorities to their country of origin, amounting to degrading treatment • No compelling reason why applicants forcibly undressed and held naked during arrest • Insufficient food and water and climate of violence and threats on bus transfer • Failure to inform applicants of their destination or reason for transfer • Short period of time between outward transfer and return journeys, each lasting fifteen hours in the hot season
Art 3 (procedural) • No investigation into one of the applicant's allegations of beating by police officers during the attempt to remove him • Applicant established *prima facie* that his injuries resulted from the use of force by the police

Art 5 §§ 1 (f), 2 and 4 • Arbitrary deprivation of the liberty of three of the applicants during their arrest and transfer • Detention without clear and accessible legal basis • Applicants not informed of legal reasons of detention • Inability to challenge lawfulness of *de facto* detention owing to lack of sufficient information

STRASBOURG

16 November 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.E. and Others v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Péter Paczolay,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato, *judges*,
Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 18911/17, 18941/17 and 18959/17) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Sudanese nationals, Mr A.E. and T.B. (application no. 18911/17), Mr A.D. (application no. 18941/17) and Mr O.A. (application no. 18959/17) ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Italian Government ("the Government") of the complaints concerning Article 3, Article 5 §§ 1, 2, 3 and 4, Article 8 and Article 13 of the Convention;

the decision not to have the applicants' names disclosed;

the parties' observations;

Having deliberated in private on 17 October 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the allegedly unlawful detention of the applicants, Sudanese nationals, and an attempt by the Italian authorities to remove them to their country of origin.

2. The applicants complained about the material conditions of their transfer from Ventimiglia to Taranto and back, the conditions in which they had been accommodated during their stay at the Taranto hotspot and the alleged ill-treatment of Mr T.B., the second applicant, during the enforcement of an order for his removal. The applicants raised their complaints under Article 3, Article 5 §§ 1, 2, 3 and 4, Article 8 and Article 13 of the Convention.

3. The facts of the case that took place on 24 August 2016, namely the day of the attempt to remove the applicants, may be read together with those in today's judgment in *W.A. and Others v. Italy* (no. 18787/17), where the first applicant's expulsion was eventually enforced.

THE FACTS

4. The applicants' personal details and representatives are indicated in the appended table.

5. The Government were represented by their Agent, Mr Lorenzo D'Ascia.

6. The facts of the case may be summarised as follows.

I. THE FACTS OF THE CASE AS SUBMITTED BY THE APPLICANTS

A. The arrival of the applicants in Italy and their identification

7. Between July and August 2016 the applicants reached the Italian coast by boat. The dates and places of their arrivals are indicated in the appended table. They were subjected to identification procedures and their fingerprints were taken.

8. The second applicant's name was initially recorded as Mr G.A. His actual name, as it appears on the application form, was reported during the international protection procedure (see paragraphs 50 et seq. below). The mistakes in the transcription of his details can be attributed to the second applicant's low level of literacy and linguistic difficulties.

9. The applicants were later moved to Ventimiglia, where they were hosted in a Red Cross centre. On the identity card provided there, the second applicant's name was indicated as Mr A.T.

10. The applicants were not informed of the possibility of requesting international protection during this period.

11. In the meantime, on 3 August 2016, a Memorandum of Understanding was signed between the Public Security Department of the Italian Ministry of the Interior and the National Police of the Sudanese Ministry of the Interior to facilitate the management of irregular Sudanese migrants and their repatriation to Sudan.

B. The applicants' arrest in Ventimiglia and their transfer to Taranto

12. On 17 August 2016 (in the case of the fourth applicant) and on 19 August 2016 (in the case of the other applicants), the applicants were arrested, forced to get into a police van and brought to what they understood to be a police station, where many other migrants, in particular Sudanese nationals, were present.

13. The applicants were searched, their telephones, shoelaces and belts were taken, and they were asked to undress, after which they were left without clothes for around ten minutes. Their fingerprints were then taken; the applicants offered no resistance as they had seen other migrants being slapped on the back of the head for doing so.

14. Neither the applicants nor any of the other migrants in their group were provided with any information regarding the reason for or the length of their detention. They did not have a chance to appoint a lawyer and were not provided with an interpreter at any point during their detention.

15. On 19 August 2016 the applicants and approximately twenty other migrants were forced to get onto a bus and started a journey escorted by numerous police officers. They were not provided with any documents or other information by the authorities, so they were completely unaware of what their destination was and the reasons for the transfer. On the bus, the migrants were not free to leave their seats or the vehicle, and so were forced to remain in a seated position for the entirety of the trip. Anyone who wished to access sanitary facilities was accompanied by two police officers. The toilet doors were left open so that the migrants were exposed to the view of the officers and of other migrants.

16. The applicants were offered one sandwich during the whole journey and water was distributed only upon request and after a long wait. They claimed that no lawyers or interpreters had been present during the journey.

17. On 20 August 2016 the bus reached the Taranto hotspot, some 1,150 km from Ventimiglia.

C. The applicants' stay at the Taranto hotspot and their expulsion orders

18. Once at the Taranto hotspot the applicants were not allowed to leave the facility. At that point the second applicant's name was registered by the Taranto police as Mr T.A.

19. The applicants were accommodated in tents situated in the centre's courtyard, under the sun. Owing to the absence of shade, the applicants were exposed to temperatures which were very high, given the time of year. They could not move freely to access sanitary facilities; instead, they had to be escorted there by four police officers per individual and the doors of the toilets were again kept open. There was no possibility of taking showers and food and water were insufficient.

20. The applicants' fingerprints were taken again. As before, they offered no resistance because they claimed to have seen police officers beating up migrants in order to forcibly obtain their fingerprints. In that connection, the applicants submitted a 2016 report by Amnesty International which criticised the Italian police for their practice of forcibly taking fingerprints. The report described the use of aggressive strategies against those who refused to cooperate, including the use of physical force and prolonged detention, and concluded that the strategies entailed serious human rights violations.

21. On 22 August 2016 the applicants were obliged to sign documents – the contents of which they did not understand – which turned out to be removal orders given by the Prefect of Taranto. The orders were approved by the Taranto Justice of the Peace on the same day. During the approval hearing the applicants were assisted by an interpreter; however, they were unable to follow the hearing because they spoke a different dialect of Arab from the interpreter. The applicants therefore did not understand the questions put to them.

22. Each of the approval decisions given by the Justice of the Peace contained the following sentence handwritten in Italian "[the applicant declares] that he does not have the intention to request international protection". The applicants submitted that they had been obliged to sign the document, the content of which they had not understood, and they affirmed that, on the contrary, they had voiced their desire not to be removed to Sudan because they feared for their lives if they should return there.

D. The applicants' journey back to Ventimiglia and their transfer to Turin

23. In the early morning of 23 August 2016 the applicants and other co-nationals were transferred by bus back to Ventimiglia. The conditions they experienced on the fifteen-hour journey were much the same as those they had experienced on their way to Taranto as described above. Once in Ventimiglia, the applicants met a representative of the Sudanese Consulate, who recognised them as being Sudanese nationals.

24. On the following day the applicants were transferred to Turin Airport, where they were handcuffed, in order to put them on a flight to Sudan. However, the Italian authorities eventually informed them that, because of the insufficient number of seats available on the aircraft, the removal of the applicants and some other Sudanese nationals (seven migrants in all) would have to be postponed until another flight was available. The applicants' co-nationals for whom a place was found in the aircraft were repatriated to Sudan on the same day. Among those migrants were, allegedly, the applicants in the case of *W.A. and Others v. Italy* (cited above).

25. The applicants were then transferred to the Turin CIE (Identification and Expulsion Centre) and the Chief of Police issued a detention order in respect of them.

26. During the validation hearing, the applicants declared that they did not wish to go back to Sudan owing to the risk to their lives.

27. The orders for the applicants' detention in the centre were approved by decisions of the District Court of Turin between 1 and 7 September 2016.

E. The attempt to remove Mr T.B., the second applicant

28. In the meantime, in the early morning of 1 September 2016, Mr T.B. (the second applicant) and another Sudanese national, Mr A.M.A., were woken up by the police, handcuffed, forced to get on a police van and transferred to the airport, where other police officers were waiting.

29. The police officers then attempted to force the second applicant and his compatriot to board an aircraft, but they protested and became very agitated. In response, the police beat them; the second applicant was hit on his face and stomach.

30. This part of the facts was partially described by the first and fourth applicants during the procedure concerning their application for international protection.

31. The two migrants were then physically forced onto the aircraft and tied up. However, the pilot and a flight attendant considered that the situation and the agitated state of the two individuals were not compatible with aviation safety rules, and asked the police to let the individuals off the aircraft, which they eventually did.

32. The second applicant was brought back to the Turin CIE. Once there he reiterated his intention to obtain international protection and his name was eventually added to the list of asylum seekers.

33. The second applicant's detention was again approved by the District Court of Turin.

F. The applicants' international protection procedures

1. Mr A.D., the third applicant

34. On 6 September 2016 the third applicant was interviewed by the Turin territorial commission for the recognition of refugee status (hereinafter "the territorial commission") and he was granted asylum on the basis of his personal history because of the risk to his life if he were to be returned to Sudan.

2. Mr A.E., the first applicant

35. On 8 September 2016 the first applicant was interviewed by the territorial commission.

36. He described the journey from Ventimiglia to Taranto and back, and reported the facts as outlined above (see paragraphs 7 et seq.). He added that during the whole journey the migrants had been mistreated and physical violence had been used against some individuals.

37. The first applicant expressed his worries about the repatriation of certain co-nationals who were considered to be enemies by the Government of Sudan and so faced a risk to their lives once back in their country of origin. He explained that a group of Sudanese migrants had already been repatriated from Italy to Sudan. During the expulsion procedure in Italy, the individuals had been tied and handcuffed and each of them had been escorted by two police officers.

38. The first applicant also described how he had got to know two co-nationals, one of whom was named Mr A.A. He reported that those individuals had been badly beaten by the authorities at the airport in Italy.

39. The first applicant was asked whether he had been informed of the possibility of requesting international protection in Ventimiglia, during the journey to Taranto, or in Taranto. He replied that none of the Sudanese nationals in the group had met a lawyer or a judge during that period and that the migrants had not understood what was going on around them.

40. In Taranto they had been provided with an interpreter who, however, spoke Habesha, a dialect of the region between Eritrea, Somalia and Ethiopia that they were not able to understand. The first applicant reiterated that he and his co-nationals had been unable to communicate or to understand what was happening.

41. The first applicant was asked whether he and the other migrants, on that occasion, had signed the documents on the basis of the above-mentioned interpreter's translation from Italian. He replied that, without receiving any explanation, he and his co-nationals had been forced to sign the documents and that he had seen people being beaten for refusing to sign documents which they were unable to understand.

42. The first applicant was asked whether, when signing the documents in Taranto, any of his co-nationals had understood what would happen following their signature. The applicant replied that, in that context, the migrants were completely unable to understand what was going on and that, if anybody had tried to read the papers in question, they would take the documents away before forcing the person to sign them anyway.

43. The first applicant was questioned as to when exactly he had understood that he had the right to ask for international protection. He replied that he had first learned of that right at the Turin CIE, when other migrants present at the centre informed him of the possibility of doing so.

44. As to his personal history, the first applicant explained that his uncle worked for the "Justice and Equality for Darfur" party. Because of that family tie, starting from when he had been a teenager, the first applicant had been kidnapped and arrested several times, threatened with weapons, and interrogated as to the whereabouts and activities of his uncle.

45. Concerning his level of literacy, the first applicant declared that he could read letters and words written in the Arabic dialect of Darfur and that he could write a little.

46. On the same day the first applicant was granted international protection.

3. Mr O.A., the fourth applicant

47. On 15 September 2016 the fourth applicant was interviewed by the territorial commission. He described the journey from Ventimiglia to Taranto and back and reported the facts as described above (see paragraphs 7 et seq.).

48. Among other things, he declared that he was among the seven Sudanese nationals who had not been repatriated because of the lack of space in the aircraft heading to Khartoum. He stated that at 5 a.m. on an unspecified day during his detention at the Turin CIE the police had taken two of his co-nationals and brought them to the airport. When they had come back, they had swollen faces and said that they had been beaten by the police. They stated that they had cried and screamed that they did not want to be repatriated and that, once on the aircraft, the pilot had refused to take off, so they had been beaten.

49. The fourth applicant then went on to relate his personal history in Sudan. On the same day he was granted asylum because of the risk to his life if he were to be returned to his country of origin.

4. Mr T.B., the second applicant

50. On 27 September 2016 the second applicant was interviewed by the territorial commission.

51. He declared his name as Mr T.B. and described his arrival in Italy, his transfer from Ventimiglia to Taranto, his transfer back to Ventimiglia and then to Turin as described above (see paragraphs 7 et seq.). He also reported the events which had allegedly taken place on 1 September 2016 (see paragraphs 28 et seq. above).

52. The second applicant stated that, once he was brought back to the CIE after the attempted repatriation, he had met an interpreter, who, however, did not speak his dialect. He further stated that, eventually, another migrant had explained his asylum rights to him and so his name had been added to the list of asylum seekers.

53. The second applicant was asked if he knew who the persons who had beaten him were, and he answered that they were police officers, one of whom worked at the CIE, and two others who worked at the airport.

54. The second applicant was also asked if he had heard about the possibility of requesting international protection before being informed of it by the other migrant at the CIE and answered in the negative.

55. The second applicant then described his personal history, his anti-government campaigning and the consequent risk to his life if he were to be returned to Sudan.

56. Concerning his level of literacy, he declared that he had never attended school and that he was not able to read or write.

57. On 28 September 2016 the second applicant was granted international protection.

II. THE FACTS OF THE CASE AS SUBMITTED BY THE GOVERNMENT

58. As to the first applicant, Mr A.E., the Government indicated that a refusal-of-entry order (*decreto di espulsione e accompagnamento alla frontiera*) had been issued by the Prefect of Cagliari on 1 August 2016 and served on the applicant on the same day. The Government provided a copy of that document.

59. Concerning the second applicant, Mr T.B., the Government confirmed that he had given the name Mr G.A. on his arrival in Reggio Calabria.

60. The Government also pointed out that the second and fourth applicants (Mr T.B. and Mr. O.A.) had signed information sheets on their arrival ("*foglio notizie*"). The Government provided copies of those documents, which included a list of possible reasons for the migrants' journey to Italy, with the following options: "Work", "Family", "Escape from poverty", "Other" and "Asylum". No option had been ticked by the second and fourth applicants.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

NATIONAL GUARANTOR OF THE RIGHTS OF PEOPLE DETAINED OR DEPRIVED OF THEIR LIBERTY

"Report on visits to the Italian Identification and Expulsion Centres and hotspots (2016-17: first year of activity)"

61. The relevant parts of the report, which was compiled following a visit by a delegation of the Guarantor to the Taranto hotspot on 16 June 2016, read as follows:

> "[The arrival of migrants]
>
> Groups of 50 migrants regularly arrive at the hotspot by bus. When they arrive from other regions or other cities ..., migrants are subjected to very long bus journeys, which sometimes last all night ...
>
> [Freedom of movement]
>
> After identification, guests are free to leave the facility from 9 a.m. to 8 p.m. ...

> The National Guarantor notes, however, [the existence of] a legislative vacuum due to the lack of specific legislation relating to hotspots ... Indeed, those staying at the hotspot cannot leave the Centre until they have been photographed. This entails a substantial restriction of freedom of movement in the absence of an individual detention order, albeit for the limited time preceding identification."

THE LAW

I. PRELIMINARY REMARKS AS TO THE GOVERNMENT'S OBJECTIONS

62. Without explicitly raising an objection of non-exhaustion of domestic remedies, the Government submitted in their observations on the admissibility of the applications that the applicants had had effective remedies at their disposal in the domestic system to raise the complaints they alleged before the Court.

63. They emphasised that the applicants could have challenged their expulsion orders under Article 13 § 8 of Legislative Decree no. 286 of 1998. Moreover, it had been open to them to use the remedy under Article 5 of Legislative Decree no. 150/2011 or to lodge an urgent application under Article 700 of the Code of Civil Procedure. Finally, any complaint of a human rights violation could have been submitted to the domestic courts through civil or criminal proceedings.

64. The applicants in reply contended that the Government's objection under Article 35 § 1 of the Convention should be dismissed, as the applicants had not been subject to any measure concerning their removal until 22 August 2016. Therefore, they had had no concrete opportunity to appeal against the restriction of their liberty from 19 August 2022 until that date.

65. With regard to the removal orders, the applicants submitted that they had had no real opportunity to submit a timely appeal against the measures in question as they had had no contact with a lawyer who could have helped them with the necessary information. They also observed that they had had no real opportunity to challenge the removal orders before the Justice of the Peace.

66. The Government also observed in very general terms that the applicants had lost their victim status as their complaints were manifestly ill-founded.

67. The Court considers that the Government's submissions can be interpreted as an objection of non-exhaustion of domestic remedies. However, the Court is of the view that they are strictly linked to the merits of the applicants' complaints under Articles 3 and 5 of the Convention, and that it should therefore be joined to the merits of the case. With regard to the Government's objection of loss of victim status, the Court refers to its conclusions below (see paragraph 71).

II. JOINDER OF THE APPLICATIONS

68. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicants complained of having been subjected to inhuman or degrading treatment during their arrest, transportation and detention, in breach of Article 3 of the Convention. They also alleged that, before deciding on their expulsion, the national authorities had not duly considered the applicants' claim that, if returned to Sudan, they would be exposed to a real risk of being subjected to inhuman treatment in breach of the same provision. Finally, the second applicant complained of having been beaten during the attempt to remove him on 1 September 2016, as it emerged, among others, from the first applicant's declarations during his interview in the framework of the international protection proceedings. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

70. With regard to the applicants' allegations that they had been subjected to ill-treatment while detained at the Taranto hotspot, the Court observes that they failed to provide sufficient evidence to substantiate their complaint. This part of the application should be therefore declared inadmissible for being manifestly ill-founded, under Article 35 §§ 3 and 4 of the Convention.

71. Concerning the applicants' claim that the national authorities had not duly considered that, if returned to Sudan, they would be exposed to a real risk of being subjected to inhuman treatment, the Court observes that the applicants were eventually granted international protection. As they are no longer at risk of deportation to Sudan, they can no longer claim to be victims of a violation of their right under Article 3 of the Convention within the meaning of Article 34 of the Convention (see *M.A. v. Cyprus*, no. 41872/10, §§ 109-10, ECHR 2013 (extracts)). It follows that this part of the application must be rejected as being incompatible *ratione personae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

72. As to the remaining aspects of the applicants' complaints under Article 3 of the Convention, the Court notes that they are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' observations

73. The applicants reiterated their complaints.

74. The Government emphasised the wider context in which the events of the case had taken place, which they described as critical. They indicated that the applicants had been transferred from Ventimiglia to Taranto and then back because of the need to proceed with their identification in Taranto and to allow the applicants the opportunity to lodge international protection requests with more knowledge and time.

75. Concerning the conditions faced by the applicants during their arrest, the Government underlined that the request of undressing was based on medical reasons, and they attached medical reports concerning migrants other than the applicants. As for the applicants' conditions of transfer, they observed that food and drinks had been provided to them.

76. To that effect, the Government provided a copy of a request from the Imperia police headquarters to a catering company in Milan, signed on 23 August 2016, which ordered food bags for migrants who had received expulsion orders.

77. They also submitted that the applicants had had to undress for medical reasons.

78. The Government further asserted that the applicants' claim that they had had difficulties in accessing sanitary facilities was groundless, considering the number of stopovers during the journey.

79. Concerning the applicants' stay at the Taranto hotspot, the Government submitted that the applicants had benefited from the presence of staff of various human rights non-governmental organisations, medical personnel and legal advisers, and that the material conditions of their stay had been good.

80. In the Government's view, the applicants' allegations did not appear to reach the minimum level of severity for Article 3 of the Convention to be applied. Moreover, the alleged shortcomings would have taken place for a short period of time, namely five days.

2. The Court's assessment

81. The Court reiterates that where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. It also emphasises that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for because the relevant severity threshold has not been attained (see *Bouyid*

v. Belgium [GC], no. 23380/09 §§ 86-87, ECHR 2015). Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention (ibid., §§ 100-01).

(a) The applicants' material conditions during their arrest and their bus transfer

82. With regard to the applicants' complaint concerning their material conditions during their arrest, the Court observes that the applicants stated that they were asked to undress, after which they were left without clothes for around ten minutes (see paragraph 13 above). The Government, for their part, replied that the applicants' undressing was due to medical reasons, and they produced medical reports attesting medical visits of migrants, which however were not the applicants.

83. In this respect, the Court recalls having already found that the procedure of forcible undressing by the police may amount to such an invasive and potentially debasing measure that it should not be applied without a compelling reason (see, *mutatis mutandis*, *Wieser v. Austria*, no. 2293/03, § 40, 22 February 2007, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 208, ECHR 2012). No such argument has been adduced by the Government to show that the measure applied against the applicants, who were already in a vulnerable situation, was necessary (as to the applicants' vulnerability, see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 160-61, 15 December 2016).

84. Thus, while the Court is sensitive to the Government's position that the applicants' undressing could have been required by medical reasons, in the present case, the Government have not given any compelling reasons why the applicants, together with many other migrants, had to undress and wait naked for around ten minutes before being examined medically, without ensuring any privacy and while being guarded by police.

85. In the Court's view, this situation of the applicants should be examined in the light of a global evaluation of the time during which they were in the hands of the Italian authorities.

86. In this context the Court will also examine the applicants' complaints regarding the difficult conditions during their bus transfer from Ventimiglia to Taranto and back. It observes that these complaints had been voiced at various times, including during the applicants' interviews in the framework of the international protection proceedings. On that occasion, the first, second and fourth applicants provided the same description of the conditions of their transfer, noting in particular the constant control exercised by the police and the climate of violence and threats, which must have also been a source of distress.

87. Moreover, it appears from the applicants' statements that the food and, in particular, water provided was insufficient for their needs, considering the length of the journey and the hot season in which it took place. In this connection, the Court finds that the Government's arguments are not sufficient to disprove the applicants' allegations and that the copy of the requests from the Imperia police headquarters to a catering company ordering food bags concerned other migrants than the applicants. The Court considers that this situation, although not taken alone but examined in the general context of the events, was clearly of such a nature as to lead to mental stress.

88. The Court further takes into account the length of the applicants' journey, which took place during a particularly hot time of year, the fact that they were not informed of their destination or the reasons for their transfer, and that their transfer from Ventimiglia to Taranto on 19 August 2016 and their return to Ventimiglia on 23 August 2016 were carried out within a short time.

89. In the particular circumstances of this case, the Court finds that these material conditions, while the applicants were under the control of the authorities, taken together, caused the applicants considerable distress and feeling of humiliation to such a degree as to amount to degrading treatment prohibited under Article 3 of the Convention (see, *mutatis mutandis*, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 58, ECHR 2006-XI, and *Akkad v. Turkey*, no. 1557/19, § 115, 21 June 2022).

90. The Court thus considers the Government's objection of non-exhaustion of domestic remedies, which was very general on this point and not accompanied by any relevant examples (see paragraph 63 above *in fine*) must be dismissed and concludes that there has been a breach of Article 3 of the Convention as regards the conditions that the applicants' were subject to during their arrest and bus transfer.

(b) The second applicant's claim of ill-treatment

91. In relation to the second applicant's claim of having been beaten during the attempt to remove him on 1 September 2016, the Court observes that, in addition to his own account of the events, which he reiterated to the authorities handling his asylum request (see paragraphs 29 and 51 et seq. above), the first applicant stated, during his interview in the framework of the international protection proceedings (see 38 paragraph above), that he had got to know two co-nationals during his stay in Turin, one of whom was named Mr A.A., and that that individual, together with another migrant, had been badly beaten by the authorities at the airport (see the applicants' claim on this point, paragraph 69, *in fine*, above). In this respect, the Court notes the similarity of the name of the person allegedly beaten, as provided by the first applicant during his interview in the framework of the international protection proceedings, with the second applicant's name, as provided to the Court and in the different versions during his stay in Italy (see paragraphs 8, 9 and 18

above). The Court also notes that no information has been provided by the Government in this regard. The fourth applicant also declared to the territorial commission that while he was detained at the Turin CIE, the police had taken two of his co-nationals to the airport; when they came back, their faces had been swollen and they said that they had been beaten up by the police.

92. In this context, it should also be emphasised that when questioned by the authorities responsible for his international protection application, the second applicant indicated that he knew who the perpetrators of his ill-treatment were, namely three police officers, one of whom worked at the CIE while the two others worked at the airport (see paragraph 53 above). However, it would seem that that information did not lead to any subsequent investigation by the national authorities (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007). The applicant thus made a *prima facie* case that his injuries had resulted from the use of force by the police (see *Muradova v. Azerbaijan*, no. 22684/05, §§ 107-08, 2 April 2009).

93. It is to be recalled that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. Under Articles 2 and 3 of the Convention, where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government (see *El-Masri*, cited above, § 152, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

94. In the light of these considerations and taking into account that the Government have not formulated any observations on this point, the Court concludes that there has been a breach of Article 3 of the Convention in relation to the second applicant in this respect.

IV. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 2 AND 4 OF THE CONVENTION

95. The applicants complained of having been unlawfully deprived of their liberty from their arrest in Ventimiglia until the hearing for the approval of the detention orders in respect of them, in breach of Article 5 §§ 1, 2 and 4 of the Convention. Article 5 reads as follows in relevant parts:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

..."

A. Admissibility

96. The Government submitted that the present complaint should be rejected as manifestly ill-founded.

97. The applicants reiterated their complaint.

98. With regard to the first applicant, Mr A.E., the Court notes that he was served with a refusal-of-entry order on 1 August 2016. It thus declares his complaints under this heading inadmissible as manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

99. As to the remainder of the complaint, the Court notes that it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

100. The second, third and fourth applicants reiterated their complaints.

101. The Government contended that the applicants, who had merely undergone identification procedures and preliminary administrative activities, had at no stage been unlawfully detained contrary to Article 5 § 1 of the Convention.

102. They stated that, in any event, the applicants had been issued with removal orders, translated into Arabic, where all their rights had been enumerated. Moreover, the applicants had been brought before the Justice of the Peace as soon as they had returned to Taranto.

103. The Court notes that the general principles regarding the restriction of liberty have been reiterated in *Saadi v. the United Kingdom* ([GC], no. 13229/03, §§ 61-74, ECHR 2008). The Court also refers to *Khlaifia and Others*, cited above, §§ 88-92) and *J.A. and Others v. Italy* (no. 21329/18, §§ 79-83, 30 March 2023), the latter concerning, in particular, the restriction of liberty involved in migrants' stays in hotspots.

104. It observes that on 17 August 2016, as regards the fourth applicant, and 19 August 2016, as regards the second and third applicants, they were arrested and transferred to what they understood to be a police station. On 19 August 2016, they were forced to get on a bus and started a journey, escorted by numerous police officers, without knowing their destination. As it transpired, they were transferred from Ventimiglia to Taranto. The applicants claimed that they had not received any documents regarding the reasons for their deprivation of liberty and the Government, for their part, did not submit any argument capable of proving the contrary.

105. The next day, the applicants reached the Taranto hotspot, which they were not permitted to leave. It was not until 22 August 2016 that they were served with a refusal-of-entry order, which was approved by the Justice of the Peace on the same day.

106. The Court considers that the first limb of Article 5 § 1 (f) of the Convention ("the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country") applies to the facts of the case. In the light of the circumstances described by the applicants and not contested by the Government – namely the arrest and transfer of the applicants, the failure to provide them with any documents, and their being prevented from leaving the facility – the Court concludes that the applicants were arbitrarily deprived of their liberty, in breach of the above-mentioned provision.

107. Moreover, the Court notes the existence of a legislative vacuum due to the lack of specific legislation relating to hotspots, as reported in 2016 by the National Guarantor of the Rights of People Detained or Deprived of their Liberty. The relevant parts of the report, which was compiled following a visit by a delegation from the office of the Guarantor to the Taranto hotspot on 16 June 2016, state that the persons staying at the hotspot could not leave the facility until they had been photographed. This, in the Guarantor's view, entailed a substantial restriction of their freedom of movement (albeit for a limited time preceding the migrants' identification) in the absence of an individual detention order.

108. In view of the above finding regarding the lack of a clear and accessible legal basis for the applicants' detention, the Court fails to see how the authorities could have informed the applicants of the legal reasons for their deprivation of liberty or have provided them with sufficient information or enabled them to challenge the grounds for their *de facto* detention before a court (see *Khlaifia and Others*, cited above, §§ 117 and 132 et seq.).

109. Therefore, the Court dismisses the Government's objection as to the applicants' failure to exhaust the available domestic remedies and concludes that there has been a violation of Article 5 §§ 1, 2 and 4 of the Convention in respect of the second, third and fourth applicants.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. The applicants also complained under Articles 8 and 13 of the Convention of a breach of their right to respect for their private life, their family life and their home, and of not having at their disposal an effective domestic remedy for their complaints under Articles 3, 5 and 8 of the Convention. They also relied on Article 5 § 3 of the Convention to complain of not having been brought promptly before a judge or other officer authorised by law to exercise judicial power.

111. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

113. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage flowing from the violation of Article 3 of the Convention. In addition, under the same head, the applicants claimed EUR 10,000 each in respect of the breach of Article 5 §§ 1, 2, 3 and 4 of the Convention, EUR 2,000 each for the violation of Article 8 of the Convention, and EUR 5,000 each for the breach of Article 13 of the Convention.

114. The Government contested those claims.

115. The Court awards the first applicant EUR 8,000, the second applicant EUR 10,000, and the third and fourth applicants EUR 9,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

116. The applicants also claimed EUR 33,583.98 in respect of costs and expenses incurred before the Court.

117. The Government contested this claim.

118. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to

quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 jointly for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's preliminary objection concerning the non-exhaustion of domestic remedies and *dismisses* it;

3. *Declares* the complaints concerning Article 3 of the Convention (regarding the material conditions during the applicants' arrest and transfer as well as the ill-treatment inflicted on the second applicant) and Article 5 §§ 1, 2 and 4 of the Convention (with regard to the second, third and fourth applicants) admissible, and the applicants' complaint under Article 3 of the Convention (concerning the conditions of their stay at the Taranto hotspot) and the first applicant's complaint under Article 5 §§ 1, 2 and 4 of the Convention inadmissible;

4. *Holds* that there has been a violation of Article 3 of the Convention in relation to the material conditions during the applicants' arrest and transfer;

5. *Holds* that there has been a violation of Article 3 of the Convention in relation to the ill-treatment of the second applicant;

6. *Holds* that there has been a violation of Article 5 §§ 1, 2 and 4 of the Convention with regard to the second, third and fourth applicants;

7. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 5 § 3 and Articles 8 and 13 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 8,000 (eight thousand euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 9,000 (nine thousand euros) each to the third and fourth applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iv) EUR 4,000 (four thousand euros) jointly to the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses;

that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President

APPENDIX

List of cases

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by	Date and place of the applicant's arrival in Italy
1.	18911/17	A.E. and T.B. v. Italy	17/02/2017	A.E. 1993 Turin Sudanese T.B. 1994 Turin Sudanese	Nicoletta MASUELLI	Unspecified day of July 2016, Cagliari 6 August 2016, Reggio Calabria
2.	18941/17	A.D. v. Italy	17/02/2017	A.D. 1980 Germany Sudanese	Gianluca VITALE	8 August 2016, unspecified place on the Sicilian coast
3.	18959/17	O.A. v. Italy	17/02/2017	O.A. 1989 Turin Sudanese	Donatella BAVA	14 July 2016, Reggio Calabria